

DIGEST OF BUSINESS REVIEWS

2000

00-1 Midwest Behavioral Healthcare LLC 2/4/00

Health Care
Medical Services

Messenger Model
Physician Network Joint Venture

Facts: Midwest Behavioral Healthcare LLC, (“MBH”) proposes to create a behavioral healthcare providers network comprising 10 types of services: general psychiatrists, child and adolescent psychiatrists, psychologists, nurses, social workers, counselors, foster parents, therapists, technicians and case managers. Services would be provided in six geographical areas: Fargo, N.D.-Moorhead, Minn.; Grand Forks, N.D.-East Grand Forks, Minn.; Bismarck, N.D.; Minot, N.D.; Alexandria, Minn.; and Bemidji, Minn. MBH proposes to include in its network providers of each type of behavioral health care service from only one pre-existing solo or group practice in each geographical area. Should more providers of a given type be needed, MBH would endeavor to train or recruit additional providers from outside that area. If additional providers of a given type are still needed, MBH will include additional pre-existing providers in that area, provided that the total number of MBH’s providers does not exceed 30 percent of the pre-existing providers of that type in that geographic area. Initially, MBH proposes to employ a messenger to convey contracting information between individual MBH providers and third-party payers. Within approximately two years, MBH proposes to move to a risk-sharing joint venture among its providers that will negotiate collectively on behalf of its providers, and will provide financial incentives to its providers to offer their services at more cost-efficient prices. MBH’s messenger arrangement and its joint venture arrangement will both be non-exclusive, permitting MBH’s providers to join any other health care provider network at any time.

Response: It does not appear that MBH’s operations will substantially alter the pre-existing market structure of behavioral health services in any of the six identified geographic areas. Evaluating both the messenger arrangement and the financially integrated joint venture under the rule of reason, it appears unlikely that either will result in any substantial competitive harm. The Department has no present intention to challenge the proposal.

Fishing

Fishermen's Cooperative

Facts: The Pollock Conservation Counsel ("PCC") and its members propose a joint harvesting agreement in which PCC's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to its members as a group by the United States Government under the American Fisheries Act and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to vessels that catch and process their own fish on board ("catcher/processors"). PCC's members consist of catcher/processors entitled to a portion of this allocation. Under the regulatory plan the entire allocation may be harvested by each licensed catcher/processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The processors argue that such a system encourages over-investment in harvesting and processing capacity as well as needless harvesting of ecologically-sensitive non-target species. PCC argues that its members could increase their productivity by 26 percent as a result of eliminating the wasteful results of the olympic system. The proposed agreement expressly forbids participating firms from collaborating on purchasing, processing, marketing, or sales plans.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.¹ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

¹ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Fishing

Fishermen's Cooperative

Facts: The Akutan Catcher Vessel Association ("ACVA") and its members propose a joint harvesting agreement in which ACVA's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to on-shore processing plants that are supplied by catcher vessels. ACVA's members own the catcher vessels that supply fish to Trident Seafoods Corporation ("Trident") for processing.² Under the regulatory plan the entire sub-allocation of each processor may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. ACVA asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species. The proposed agreement does not extend to processing, marketing, or sales of any of the members production.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.³ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

² Trident has an ownership interest in a number of the catcher vessels that will be supplying it pollock under the proposed joint harvesting agreement. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA.

³ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Fishing

Fishermen's Cooperative

Facts: The Offshore Pollock Catchers Cooperative ("OPCC") and its members propose a joint harvesting agreement in which OPCC's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to vessels that catch and process their own fish on board ("catcher/processors"), with a further sub-allocation to catcher/processors named in Section 208(b) of the AFA. OPCC's members consist of all catcher/processors entitled to the Section 208(b) sub-allocation. Under the regulatory plan the entire sub-allocation may be harvested by each licensed catcher/processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The processors argue that such a system encourages over-investment in harvesting and processing capacity as well as needless harvesting of ecologically-sensitive non-target species. The proposed agreement does not extend to processing, marketing, or sales of any of the members production.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.⁴ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

⁴ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Steel Drums

Group Purchasing
Group Sales

Facts: Containers America LLC (“Containers America”) and its members propose the creation of a joint selling and purchasing vehicle for five regional, single-plant manufacturers of steel drums. Due to the high cost of shipping steel drums, a manufacturer in most cases can only efficiently compete for sales within a 100-200 mile radius of its plant. Thus, Containers America’s members believe that they are at a competitive disadvantage vis-a-vis multi-plant rivals in selling to national and multi-regional customers who desire to acquire their steel drum requirements from a single supplier, and the members intend, as a group, to jointly bid for such contracts. All price discussions among the members would be limited to information necessary to prepare national or multi-regional bids, and the members would not exchange any other non-public information. The members would be free to bid independently outside of the joint venture and would continue to act independently of each other in seeking business within their own regions. All of the members’ plants are more than 300 miles from the nearest member’s plant, and all but one of the five members face substantial competition from firms located in their markets who are not members of the joint venture. Containers America would also act as a joint purchasing agent for its members in order to obtain quantity discounts on steel and other products needed to manufacture steel drums. Containers America’s members collectively account for slightly less than 15 percent of United States steel drum sales.

Response: Since none of the members has been successful to date in landing a national contract, any exchange of pricing information relative to national or multi-regional customers should not have any adverse competitive effect in the market for such customers. Moreover, since the price discussions among the members will be limited to information necessary to prepare bids on national and multi-regional contracts, and since members generally face significant competition from non-member rivals for local regional business, we would not expect those price discussions or the common input costs that could result from the proposed joint purchasing to diminish local regional price rivalry. Nor do we believe that the proposed joint purchasing raises any danger of oligopsonistic pricing. Finally, we note that to the extent that the contemplated joint selling and/or purchasing activities provide steel drum customers with additional purchasing options or lower their costs, the proposed conduct could have procompetitive effects. The Department has no present intention to challenge the proposal.

Clothing

Standards Program

Facts: The Apparel Industry Partnership (“AIP”), an informal association consisting of representatives from footwear and apparel companies, as well as labor, consumer, human rights and religious organizations, proposes to adopt a set of workplace standards and a means of compliance monitoring that would be used to inform and assure U.S. consumers that compliant footwear and apparel have been made under decent and humane conditions.⁵ AIP has agreed to establish a Workplace Code of Conduct (“Code”) and to allow firms that choose to comply with the Code for some or all of their products to advertise the fact of their compliance. No firm would be required to comply with the Code. Companies that do choose to comply would agree that their products will not be manufactured by means of forced or child labor, that employees will not be subjected to physical or mental abuse, harassment or various types of discrimination, that the companies will maintain a safe and healthy work environment, and will recognize and respect employees rights to freedom of association and collective bargaining. Such companies will also adhere to certain minimum standards with respect to wages and working hours. AIP has also developed a set of Monitoring Principles to ensure that firms that publicly proclaim adherence to the Code are in fact complying with those standards.

Response: While compliance with minimum wage and maximum hour provisions of the Code could increase manufacturing costs, it appears that labor typically accounts for less than three percent of the U.S. retail price of clothing made in domestic sweatshops and as little as 0.5 percent for garments sewn abroad. In 1994, labor accounted for less than five percent of the U.S. retail price of domestically produced footwear and between 1.6 and 3.3 percent of footwear produced in certain countries. Thus, it is far from clear that adherence to the Code will have any adverse effect on the prices paid by U.S. consumers of apparel or footwear. To the extent that a firm’s ability to advertise compliance with the Code provides useful purchasing information to a substantial number of consumers, it is possible that the Code and Monitoring Principles will have a net procompetitive effect. The Department has no present intention to challenge the proposal.

⁵ AIP received a Business Review letter from the Department on October 31, 1996, with respect to its proposed efforts to develop workplace standards and the means of ascertaining whether a firm actually conducted its manufacturing operations in compliance with such standards.

Fishing

Fishermen's Cooperative

Facts: The UniSea Fleet Cooperative ("the Cooperative") and its members propose a joint harvesting agreement in which the Cooperative's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to on-shore processing plants that are supplied by catcher vessels. The Cooperative's initial members will be 14 catcher vessels that supply UniSea Inc.'s processing plant at Dutch Harbor, Alaska.⁶ Under the regulatory plan the entire sub-allocation of each processor may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The Cooperative asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species. The collective action contemplated by the Cooperative's members will be limited to joint harvesting, i.e., allocating to individual members a portion of the total quota allotted to the group; there will not be any joint marketing activity by the members.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.⁷ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

⁶ Some of the owners of the member catcher vessels have partial ownership interests in processors other than UniSea, Inc. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA. As a consequence, the partial vertical integration that exists here does not disqualify the Cooperative and its members from the antitrust exemption afforded by the AFA.

⁷ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Fishing

Fishermen's Cooperative

Facts: The Northern Victor Cooperative ("the Cooperative") and its members propose a joint harvesting agreement in which the Cooperative's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to on-shore processing plants that are supplied by catcher vessels. The Cooperative's initial members will be 12 catcher vessels that supply the processing vessel the Northern Victor, which is considered to be an onshore processor under the AFA.⁸ Under the regulatory plan the entire sub-allocation of each processor may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The Cooperative asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species. The collective action contemplated by the Cooperative's members will be limited to allocating to individual members a portion of the total quota allotted to the group; there will be no joint marketing by the members.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.⁹ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

⁸ There are degrees of cross ownership between some of the member catcher vessels and the Northern Victor, as well as between some of the member vessels and other processors, and between members and catcher vessels that supply Alaskan Pollock to processors other than the Northern Victor. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA. As a consequence, the partial vertical integration that exists here does not disqualify the Cooperative and its members from the antitrust exemption afforded by the AFA.

⁹ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Facts: The Arctic Enterprise Association ("Arctic") and its members propose a joint harvesting agreement in which Arctic's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to on-shore processing plants that are supplied by catcher vessels. Arctic's members are catcher vessels that supply TT Acquisition, Inc's ("TT") Arctic Enterprise processing facility, an onshore processor under the AFA.¹⁰ Under the regulatory plan the entire sub-allocation of each processor may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The Cooperative asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.¹¹ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

¹⁰ TT owns all four Arctic member catcher vessels that will be supplying pollock to it under the proposed joint harvesting agreement. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA.

¹¹ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Fishing

Fishermen's Cooperative

Facts: The Peter Pan Fleet Cooperative ("the Cooperative") and its members propose a joint harvesting agreement in which the Cooperative's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to on-shore processing plants that are supplied by catcher vessels. The Cooperative's initial members will be five catcher vessels that supply Peter Pan Seafood's processing plant in King Cove, Alaska, an onshore processor under the AFA.¹² Under the regulatory plan the entire sub-allocation of each processor may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The Cooperative asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species. The collective action contemplated by the Cooperative's members will be limited to joint harvesting, i.e., allocating to individual members a portion of the total quota allotted to the group.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.¹³ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

¹² Some of the member catcher vessels are owned, at least in part, by processors. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA. As a consequence, the vertical integration that exists here does not disqualify the Cooperative and its members from the antitrust exemption afforded by the AFA.

¹³ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Fishing

Fishermen's Cooperative

Facts: The Westward Fleet Cooperative ("the Cooperative") and its members propose a joint harvesting agreement in which the Cooperative's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to on-shore processing plants that are supplied by catcher vessels. The Cooperative's initial members will be 12 catcher vessels that supply Westward Seafood's processing plant in Dutch Harbor, Alaska, an onshore processor under the AFA.¹⁴ Under the regulatory plan the entire sub-allocation of each processor may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The Cooperative asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species. The collective action contemplated by the Cooperative's members will be limited to joint harvesting, i.e., allocating to individual members a portion of the total quota allotted to the group.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.¹⁵ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

¹⁴ Some of the member catcher vessels are owned, at least in part, by processors. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA. As a consequence, the vertical integration that exists here does not disqualify the Cooperative and its members from the antitrust exemption afforded by the AFA.

¹⁵ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Fishing

Fishermen's Cooperative

Facts: The Unalaska Fleet Cooperative ("the Cooperative"), its members and their owners propose a joint harvesting agreement in which the Cooperative's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to on-shore processing plants that are supplied by catcher vessels. The Cooperative's initial members will be 11 catcher vessels that supply Alyeska Seafoods, Inc.'s onshore processing plant.¹⁶ Under the regulatory plan the entire sub-allocation of each processor may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The Cooperative asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species. The collective action contemplated by the Cooperative's members will be limited to joint harvesting, i.e., allocating to individual members a portion of the total quota allotted to the group. There will not be any joint marketing activity by the members.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.¹⁷ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

¹⁶ Some of the member catcher vessels are owned, at least in part, by Alyeska Seafoods or one of its shareholders. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA. As a consequence, the partial vertical integration that exists here does not disqualify the Cooperative and its members from the antitrust exemption afforded by the AFA.

¹⁷ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Fishing

Fishermen's Cooperative

Facts: The Mothership Fleet Cooperative ("the Cooperative") and its members propose a joint harvesting agreement in which the Cooperative's members would allocate amongst themselves the fixed quota of Bering Sea/Aleutian Island ("BS/AI") Alaskan Pollock allotted to them as a group by the United States Government under the American Fisheries Act ("AFA") and regulations thereunder. The United States Government has determined to limit the amount of pollock that may be harvested in the BS/AI waters. An annual harvest quota has been established, and a percentage of that quota has been allocated to "Mothership" processors, ships that have on-board processing capabilities but do not catch fish. The Cooperative's initial members will be 18 catcher vessels that supply three Motherships that process Alaskan Pollock.¹⁸ Under the regulatory plan the entire sub-allocation of each group of processors may be harvested by each catcher vessel authorized to sell to that processor, otherwise known as an "olympic" system whereby each firm attempts to maximize its harvest by catching as many fish as fast as it can. The Cooperative asserts that such a system encourages over-investment in harvesting capacity as well as needless harvesting of ecologically-sensitive non-target species. The collective action contemplated by the Cooperative's members will be limited to joint harvesting, i.e., allocating to individual members a portion of the total quota allotted to the group.

Response: The Department of Justice has previously stated that the employment of an olympic system to harvest a fixed quota of fish is inefficient because it tends to encourage over-investment in fishing and processing capacity.¹⁹ The agreement does not restrict output of processed Alaskan Pollock or the end products which incorporate it. Elimination of the race to gather an input whose output is fixed by regulation appears unlikely to reduce output or to raise prices. To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of processed Alaskan Pollock and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have procompetitive effects. The Department has no present intention to challenge the proposal.

¹⁸ Some of the member catcher vessels are owned, at least in part, by processors. In response to a request from the Department of Commerce, the Department of Justice's Office of Legal Counsel interpreted Section 210(b) of the AFA to allow processor-owned catcher vessels to join joint harvesting cooperatives under the AFA. As a consequence, the partial integration that exists here does not disqualify the Cooperative and its members from the antitrust exemption afforded by the AFA.

¹⁹ Comments of the Department of Justice filed in Department of Commerce Docket No. 911215-1312, January 30, 1992. See also Business Review Letter of May 20, 1997, to counsel for the Whiting Conservation Cooperative.

Electrical Power

Information Exchange

Facts: The Electric Power Research Institute, Inc. (“EPRI”) proposes an information exchange designed to reduce security risks in the energy industries resulting from the increasing interconnection, interdependence and computerization of those industries and their suppliers. EPRI is a nonprofit organization committed to providing and disseminating science and technology-based solutions to energy industry problems. Membership is open to all individuals and entities interested in the issues relevant to the electric power industry. Two principal types of information will be exchanged. The first will involve energy industry specific “best practices” for cyber-security programs. The second will relate to cyber-security vulnerabilities that participants have identified in their operating equipment, electronic information and communications systems on a product-by-product basis. This information would be shared with the corresponding manufacturers, vendors or security service providers who would be invited to participate in the exchange to address their own equipment or systems. All information exchanged will relate directly to physical and cyber security. There will not be any discussion of specific prices for equipment, electronic information or communications systems. No company-specific competitively-sensitive information, i.e., prices, capacity or future plans, will be exchanged. Neither the EPRI nor any participant will recommend in favor of or against any product or system of particular manufacturers or vendors.

Response: As long as the information exchanged is limited to physical and cyber-security issues, the proposed interdiction on price, purchasing and future product innovation discussions should be sufficient to avoid any threats to competition. Indeed, to the extent that the proposed information exchanges result in more efficient means of reducing cyber-security costs, and such savings redound to the benefit of consumers, the information exchanges could be procompetitive in effect. The Department has no present intention to challenge the proposal.

Shipping

Common Billing Agent

Facts: Carrier Credit Services, Inc. ("CCS") proposes to act as a common billing and collection agent for its customers--ocean carriers in the U.S.-Puerto Rico trades. These carriers transport freight in uniform-size shipping containers. Empty containers on a chassis are delivered to a shipper's premises where the cargo is loaded into the containers. The containers are then hauled to the port of shipment, where the containers are removed from the chassis and placed in the container-ship. At the port of discharge, the containers are placed on a chassis and driven to the consignee's place of business. The carriers own (or lease) the containers and chassis. Consignees often use the containers for the temporary storage of the cargo. Carriers, wishing to have their equipment returned as soon as possible, charge consignees extra fees--called detention and demurrage charges--if the equipment is not returned within a certain period. CCS asserts that ocean shippers in the U.S.-Puerto Rico trades have a serious problem collecting monies owed them for detention and demurrage charges. CCS proposes to perform detention and demurrage billing and collection services and will publish the names of customers who have failed to pay these charges as required, including the amount of the delinquency and the number of days the payment is past due. There will be no disclosure of how much is owed to any particular carrier--only the total delinquent amount owed by the customers and the duration will be reported. This "delinquent list" will be circulated to all of CCS's ocean carrier customers. Each carrier will be solely responsible for independently developing and adopting its own credit and collection policies and procedures, both in general and with respect to firms on CSS's delinquent list. When a carrier learns that a customer has defaulted on its obligation(s) to prior (unidentified) carrier(s), the carrier will be left to make an independent unilateral decision as to whether to provide service to the customer and, if so, whether to insist on any protective credit measures. No information will be exchanged between or among ocean carriers about open accounts, the general credit terms or practices of carriers, or those used in specific cases.

Response: It does not appear likely that CSS's proposal will have an anticompetitive effect. The proposal should not reduce carrier rivalry with respect to noncredit terms, neither should carrier customers competitive options with respect to credit terms available from individual carriers be reduced. The Department has no present intention to challenge the proposal.